

AMENDED IN ASSEMBLY AUGUST 30, 2005

AMENDED IN ASSEMBLY JULY 12, 2005

AMENDED IN SENATE APRIL 27, 2005

**SENATE BILL**

**No. 360**

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**Introduced by Senator Florez**

February 17, 2005

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An act to add Chapter 3.2 (commencing with Section 1916.50) to Title 4 of Part 4 of Division 3 of, the Civil Code, relating to loans.

LEGISLATIVE COUNSEL'S DIGEST

SB 360, as amended, Florez. Consumer loans: property sales and leasebacks.

Existing law regulates contracts, including loans of money and the interest rates that may be charged on those loans.

This bill would prohibit a person from making a loan to a consumer for personal, family, or household purposes and structuring the transaction as if it were a sale of *personal* property by the consumer to the lender, accompanied by specified lease, use, or purchase options. The bill would impose civil and criminal penalties for a violation of its provisions.

Because a violation of the bill would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1.~~

2     ~~SECTION 1.~~ Chapter 3.2 (commencing with Section 1916.50)  
3 is added to Title 4 of Part 4 of Division 3 of the Civil Code, to  
4 read:

5  
6                     CHAPTER 3.2. CONSUMER LOANS  
7

8     1916.50. (a) For the purposes of this section, a “consumer” is  
9 a natural person.

10    (b) A person shall not make a loan to a consumer for personal,  
11 family, or household purposes and structure the transaction as if  
12 it were a sale of *personal* property by the consumer to the lender,  
13 accompanied by any of the following:

14    (1) A lease of, or license to use, the same or like *personal*  
15 property to the consumer.

16    (2) An option to the consumer to purchase the *personal*  
17 property.

18    (3) A lease of, or license to use, the same or like *personal*  
19 property to the consumer and an option to the consumer to  
20 purchase the *personal* property.

21    (c) A consumer may bring an action for the recovery of  
22 damages, equitable relief, exemplary damages, and attorney’s  
23 fees and costs for any violation of this section.

24    (d) A person who violates this section shall, upon conviction,  
25 be punished by a fine of not more than ten thousand dollars  
26 (\$10,000), by imprisonment in a county jail for not more than  
27 one year, or by both fine and imprisonment for each violation.

28    (e) A person who violates this section shall be liable for a civil  
29 penalty not to exceed ten thousand dollars (\$10,000) for each  
30 violation, which shall be assessed and recovered in a civil action  
31 brought in the name of the people of the State of California by  
32 the Attorney General, a district attorney, or a city attorney in a  
33 court of competent jurisdiction.

34    (f) If a transaction appears to involve a consumer’s sale of  
35 *personal* property to another and receipt of a lease of, or license

1 to use, the same or like *personal* property, an option to  
2 repurchase the *personal* property, or both a lease or license to use  
3 the same or like *personal* property and an option to purchase the  
4 *personal* property, the transaction shall be presumed to be a loan  
5 transaction and in violation of this section. The presumption  
6 established by this section affects the burden of proof only in a  
7 civil action and may be overcome by clear and convincing  
8 evidence to the contrary.

9 (g) This section does not affect the rights of a bona fide  
10 purchaser for value who may acquire the purported interest of the  
11 lender without notice of the facts constituting a violation of this  
12 section.

13 (h) Any waiver of this section is void and unenforceable as  
14 contrary to public policy.

15 (i) The rights, remedies, and penalties provided under this  
16 section are cumulative to each other and to the rights, remedies,  
17 and penalties provided under other law.

18 (j) Any action for a violation of this section shall be  
19 commenced within four years of the date on which the violation  
20 occurred.

21 SEC. 2. *It is the intent of the Legislature that nothing in this*  
22 *act shall be construed to affect, in any manner, the ability to*  
23 *establish that a transaction in the form of a transfer of an interest*  
24 *in any property is in substance a loan, as provided by case law*  
25 *and other statutory law, including Sections 1695.12, 2924, 2925,*  
26 *and 3528 of the Civil Code.*

27 SEC. 3. No reimbursement is required by this act pursuant to  
28 Section 6 of Article XIII B of the California Constitution because  
29 the only costs that may be incurred by a local agency or school  
30 district will be incurred because this act creates a new crime or  
31 infraction, eliminates a crime or infraction, or changes the  
32 penalty for a crime or infraction, within the meaning of Section  
33 17556 of the Government Code, or changes the definition of a  
34 crime within the meaning of Section 6 of Article XIII B of the  
35 California Constitution.